

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

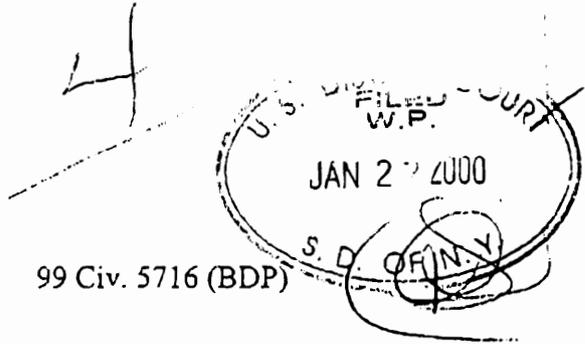
-----X
UNITED STATES OF AMERICA,

Plaintiff,

- v. -

CLEMSON PARK CONDOMINIUM and
GEM COMMUNITY MANAGEMENT, INC.,

Defendants.
-----X



99 Civ. 5716 (BDP)

CONSENT DECREE

WHEREAS, on July 19, 1999, the United States of America ("United States" or the "Government") commenced this action on behalf of Yvonne Marchfeld ("Marchfeld") alleging that Defendants Clemson Park Condominium and GEM Community Management, Inc. (the "Defendants") discriminated on the basis of handicap in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq. ("the Act"), by refusing to provide Marchfeld with an appropriate parking space in close proximity to her condominium unit; and

WHEREAS, on or about September 14, 1999, the Defendants served and filed their Answer to the Complaint and denied the allegations therein; and

WHEREAS, the Government and the Defendants have consented to the entry of this Consent Decree, without trial or adjudication of any issues of fact or law; and

WHEREAS, the Government and the Defendants agree that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving this matter;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this action pursuant to Section 812(o) of the Act, 42 U.S.C. § 3612(o), and pursuant to 28 U.S.C. §§ 1331 and 1345. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

II. APPLICATION AND PARTIES BOUND

2. This Consent Decree applies to and is binding upon the Government and upon the Defendants and their agents, employees, successors, and assigns. The undersigned representatives of the Defendants certify that they are authorized by the Defendants to enter into and consent to the terms and conditions of the Consent Decree and to execute and legally bind the Defendants to it.

III. INJUNCTIVE RELIEF

3. The Defendants and their agents, employees, successors, assigns, and all persons acting in concert or participation with any of them in the administration and management of any residential apartment dwelling or condominium, hereby agree not to discriminate against any person on the basis of race, color, religion, sex, handicap, familial status, or national origin in any aspect of the sale or rental of a dwelling.

4. The Defendants and their agents, employees, successors, assigns, and all persons acting in concert or participation with any of them in the administration and management of any residential apartment dwelling or condominium shall not discriminate on the basis of handicap against any person in any aspect of the occupancy or sale of a dwelling, by:

(a) maintaining a parking policy which discriminates against disabled residents; or (b) failing to make a reasonable accommodation in rules, policies, practices or services when such an

accommodation is necessary to afford disabled individuals an equal opportunity to use and enjoy a dwelling.

5 Upon execution of this Consent Decree, if not already so accomplished, Defendants shall establish and clearly designate for Marchfeld's sole use a permanent parking space which shall consist of the two parking spaces immediately adjacent to the walkway leading to Marchfeld's condominium unit (73 Sycamore Drive, Middletown, New York) which are located immediately to the left of the walkway if facing the condominium unit, and which shall be assigned to Marchfeld for as long as she owns or resides at that condominium unit.

6. Nothing in this section shall be interpreted as or construed to grant, resolve, dispose of or otherwise bar future request(s) for an accommodation by any individual resident, occupant, or tenant of Clemson Park Condominium for whom an accommodation is necessary to afford such person an equal opportunity to use and enjoy a dwelling.

IV. NOTICE TO THE PUBLIC

7. Within thirty (30) days after this Consent Decree is entered by the Court, Defendants shall:

A. Post and maintain fair housing signs, in a form that complies with 24 C.F.R. Part 110, in all offices on the premises of GEM Community Management, Inc, and in all public rooms on both floors of the Clemson Park Condominium community building, and in all packages of information provided to new condominium owners at Clemson Park Condominium. The signs shall also state that applications for reasonable accommodations are available to all current and future owners, residents, occupants and tenants upon request.

B. Include in the rules and regulations of the Clemson Park Condominium a preamble, authored by the Board of Directors, stating that (1) no condominium owner may

discriminate in the sale or rental of his or her condominium unit on the basis of handicap, race, color, religion, sex, familial status or national origin; and (2) all condominium owners must conduct all advertising for the rental or purchase of dwellings in accordance with the provisions of the regulations promulgated by HUD at 24 C.F.R. Part 110.

C. Include the following statement on all applications or forms used by

Defendants:

We do not discriminate on the basis of handicap, race, color, religion, sex, familial status or national origin.

D. Post in all offices used, managed or leased by the Defendants or their agents, and in all public rooms on both floors of the Clemson Park Condominium community building, and place in all packages of information provided to new condominium owners at Clemson Park Condominium, a sign no smaller than 10 inches by 14 inches which indicates that all dwellings in Clemson Park Condominium are subject to the reasonable accommodation requirements of the Fair Housing Act. The poster shall be in compliance with regulations promulgated by HUD and described in 24 C.F.R. Part 110.

V. APPLICATIONS FOR REASONABLE ACCOMMODATIONS

8. Defendants shall make available to all current and future residents, occupants and tenants who request a reasonable accommodation an application for reasonable accommodation substantially similar to that set forth in Appendix A hereto and which shall also contain the fair housing logo (see 24 C.F.R. Part 110). Defendants shall circulate this form to all residents, occupants and tenants who request a reasonable accommodation and annex this application to materials routinely given to new residents, occupants and tenants.

9. Defendants shall designate a specific employee or agent whose duty it

shall be to process requests for reasonable accommodations as delineated herein. The employee or agent shall maintain a log reflecting the name, address and telephone number of any individual making a request, the type of request, and the response to the request.

VI. MONETARY RELIEF

10. Clemson Park Condominium shall pay Marchfeld a total of Two Thousand Dollars (\$2000) without interest or costs. The payment shall be made in one of the following two ways: Either (1) Defendants will pay Marchfeld \$2000 by check made payable to Yvonne Marchfeld on or before February 15, 2000; or (2) beginning on February 1, 2000, Marchfeld shall be relieved from her obligation to pay the monthly common charges arising from her occupation of Condominium Unit No. 73 (currently, the monthly charge is \$133.98) until such time as those charges, together with the aforementioned annual fee, total \$2000. Marchfeld's obligation to pay the monthly common charge and the annual fee shall resume only when she has been relieved of exactly \$2000 in payments. In consideration of this monetary relief, Marchfeld shall execute a general release substantially in the form annexed hereto as Appendix B.

VII. RESOLUTION OF CLAIMS

11. This Consent Decree shall be in full settlement and satisfaction of all violations, claims for relief and causes of action alleged in the Complaint and in the administrative charge of discrimination filed by the Department of Housing and Urban Development under complaint number 02-97-1050-8 against the Defendants and their agents and employees. This Consent Decree in no way affects or relieves the Defendants of their responsibility to comply with any federal, state or local law or regulation. Upon entry of this

Consent Decree, the within action shall be deemed dismissed with prejudice as against the Defendants. Notwithstanding, such resolution does not constitute an admission or any evidence by any Defendant of wrongdoing or misconduct.

VIII. DEFAULT

12. In the event that Defendants seek monies from Marchfeld before she has been relieved of \$2000 of payments to Defendants as provided for in Paragraph 11 of this Consent Decree, the Government, in its sole discretion, may (1) seek to execute upon the judgment in the manner provided by the Federal Rules of Civil Procedure, or (2) apply to the Court for an order vacating this Consent Decree. The Court shall vacate the Consent Decree upon the Government's demonstration that Defendants willfully defaulted in their payment obligations set forth herein. In the event that the Court shall vacate the Consent Decree, the action shall proceed through motion practice, discovery, trial and judgment as though this Consent Decree had not been entered.

IX. REPORTING

13. Six (6) months after the entry of this Consent Decree, and thereafter every year for a period of two years after entry of this Consent Decree, Defendants Clemson and GEM shall deliver to counsel for the United States (at the address below) signed affidavits describing compliance with the terms of this Consent Decree including the following information:

A. The name and title of the agent or employee designated to process applications for reasonable accommodation; and

B. A statement concerning the number of applications submitted for reasonable accommodations and the resolution of those requests.

X. RECORD-KEEPING PROVISION

14. Defendants shall, for two years following the entry of this Consent Decree, preserve all records which are the source of, or contain any of, the information pertinent to Defendants' obligations under this Consent Decree, including copies of requests for reasonable accommodation and a copy of the log maintained pursuant to this Consent Decree. Upon reasonable notice to counsel for Defendants, representatives of the United States shall be permitted to inspect and copy all pertinent records of Defendants at any and all reasonable times; provided, however, that the United States shall endeavor to minimize any inconvenience to Defendants from inspection of such records.

XI. COMPLAINTS

15. Defendants, during the term of this Consent Decree, shall advise counsel for the United States in writing within thirty (30) days of receipt of any complaint, including administrative or legal complaints, against Defendants, or against any of Defendants' employees, agents or residential properties, alleging housing discrimination. Such report shall include full details of the complaint and any action taken or proposed by Defendants in response.

XII. ENFORCEMENT

16. This action shall be dismissed with prejudice and the case closed on the Court's docket, subject to reopening for three years from the date of entry of the Consent Decree for the purpose of implementing or enforcing the provisions of this Consent Decree. At the end of this time, the Consent Decree will expire, unless the United States petitions the Court to extend the term of the Consent Decree upon notice to the undersigned counsel for the Defendants and the Court grants the relief.

17. If the Government believes that Defendants have violated this Consent

Decree, the Government will notify Defendants in writing and provide Defendants with ten (10) business days to cure their violation before applying to the Court for relief.

XIII. RESERVATION OF RIGHTS

18. Nothing contained in this Consent Decree is intended or shall be construed as a waiver by the Government of any right to institute any proceeding or action against the Defendants for violations of any statutes, rules or regulations administered by the Government, or to prevent or limit the rights of the Government to obtain relief under the Act or any other federal statutes or regulations, or any other relief on account of any violation of this Consent Decree or any other provision of law.

XIV. INTEGRATION CLAUSE

19. The Government and the Defendants understand and agree that this Consent Decree represents the entire agreement between them. No prior agreements, representations or statements, oral or written, shall be considered part of this Consent Decree or given any force or effect.

20. There shall be no modification of this Consent Decree without the written consent of the Government and the Defendants and the approval of the Court.

XV. COSTS AND ATTORNEY'S FEES

21. Each party shall bear its own costs and attorney's fees in this action.

THE PARTIES HEREBY CONSENT to entry of the foregoing Consent Decree:

FOR THE UNITED STATES OF AMERICA:

Dated: New York, New York
December 9, 1999

MARY JO WHITE
United States Attorney for the
Southern District of New York

By: 
NICOLE L. GUERON (NG-7682)
Assistant United States Attorney
100 Church Street, 19th Floor
New York, New York 10007
Tel.: (212) 637-2699

FOR DEFENDANTS:

Dated: New York, New York
December 9, 1999

Ronald E. Helhoski, P.C.
Counsel for Defendants

By: 
RONALD E. HELHOSKI
P.O. Box 3016
Middletown, NY 10940

Dated: New York, New York
~~December 9, 1999~~
JANUARY 14, 2000

Clemson Park Condominium

By: 
PRES.

Dated: New York, New York
~~December 9, 1999~~
JANUARY 14, 2000

GEM Community Management, Inc.

By: 
JOSEPH BAHATKA, PRES

JUDGEMENT IS HEREBY ENTERED in accordance with the foregoing
Consent Decree this 26 day of January 1999, White Plains, New York.

B. J. D. Parker
UNITED STATES DISTRICT JUDGE

Appendix A**APPLICATION FOR REASONABLE ACCOMMODATION**

It is the policy of Clemson Park Condominium not to discriminate against anyone in any activities related to the sale or occupancy of its condominiums or in the provision of services in connection with these condominiums on the basis of handicap, race, color, religion, sex, familial status or national origin. It is the policy of Clemson Park Condominium to comply with the reasonable accommodation provisions of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., the rules and regulations promulgated thereunder, and state and local law.

If you believe that you are entitled to a reasonable accommodation from Clemson Park Condominium, please specify the type of accommodation you are seeking and the basis for it in the space below. Attach copies of any medical or other documentation (such as disabled driver's license) you wish Clemson Park Condominium to consider.

If you would like further information regarding this application, you may contact [name] at [phone].

1. Name:
2. Address:
3. Telephone:
4. Nature of request:
5. Documentation attached:
6. Other people who may be contacted concerning this request:
7. Date of request:

Appendix B

RELEASE

Upon receipt of two thousand dollars (\$2000) in consideration provided to me pursuant to the Consent Decree entered in United States of America v. Clemson Park Condominium and GEM Community Management, Inc., 99 Civ. 5716 (BDP) (S.D.N.Y.), I, Yvonne Marchfeld, hereby irrevocably release, acquit and discharge Clemson Park Condominium and GEM Community Management, Inc. and their officers, directors, agency, employees, successors, and assigns, from any and all liability for any claims and/or damages that I may have against Clemson Park Condominium and GEM Community Management, Inc. and their officers, directors, agency, employees, successors, and assigns, asserted in either the above-referenced action or the charge of discrimination filed antecedent to this action – complaint number 02-97-1050-8 – with the United States Department of Housing and Urban Development.

I fully acknowledge and agree that this Release shall be binding on my heirs, representatives, executors, successors and administrators and assigns. I hereby acknowledge that I have read and understand this Release and have executed the same voluntarily and with full knowledge of its legal consequences.

YVONNE MARCHFELD

DATED

STATE OF NEW YORK)
COUNTY OF) ss.:

On this ___ day of _____, 1999 before me came Yvonne Marchfeld to me known to be the individual described herein, and who executed the foregoing instrument, and acknowledged that she signed the same.